STRAITS SETTLEMENTS REPORTS.

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[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.

July 5, 1938.

CHEW KONG CHIN
vs.
ESTATE & TRUST AGENCIES (1927) LIMITED.

[MALACCA SUIT No. 75 of 1937]

Partnership—Rights and liabilities of personal representatives of deceased partner.

A partnership was formed to plant and develop rubber estate. One of the partners was appointed manager and he was promised a bonus share in the profits in addition to the share to which he was entitled in respect of his share in the capital. One of the partners died and subsequently legal personal representatives opposed the Manager's claim for his bonus share in the profits.

Held, that in the absence of a special agreement partners cannot generally claim any special remuneration *inter se* even though one or two of the partners may have done all the work. When, however, a partner died and his administrators had actually claimed his share in the partnership assets the surviving partners are allowed to charge for their services in earning the profits in which the Administrators of the deceased partner claimed a share. The administrators cannot claim a share in the profits without also showing their share of the expenses which are a necessary incident to the earning of the profits. In the present case all the surviving partners had agreed what the Manager's remuneration should be and as they had far the largest interest in the business they were in the best position to say what remuneration would be reasonable. When therefore the representatives of the deceased partner elected to retain the deceased partner's share in the partnership they must be taken to have known the conditions and to have accepted them.

TRIAL OF ACTION.

Laycock and *T. W. Ong* for the plaintiff.

Massey for the defendants.

Cur. Ad. Vult.

TERRELL, J.—At the end of 1928 or early in the year 1929 some Malacca Chinese discussed the formation of a partnership for the purpose of acquiring and developing some land at Paloh in Johore as a rubber estate. The partners were to be Lim Kim Suah, Chan Kok Teng (since deceased), Chan Kang Swi, Chew Kong Chin (the plaintiff), Teh Eng Khoay and Tan Chor Hock. The plaintiff had had considerable experience as a planter and had recently opened up an estate at Tenang in Johore which was sold to the Kuala Muda Company. After the sale the plaintiff continued to act as labour contractor to the Company, and was so acting when the partnership in question was formed.

A meeting of the proposed partners was held at the Choon Whye Lim Club in Malacca on the 14th February 1929. The decisions arrived at that meeting were entered in a minute book, Exhibit 1, and were signed by all the partners. The principal terms of the agreement as recorded were as follows:—

(a) The capital was to be $120,000 divided as follows:—

Lim Kim Suah	..	$40,000
Chan Kok Teng	..	20,000
Tan Chor Hock	..	5,000
Tan Eng Khoay	..	5,000
The plaintiff	..	10,000
Chan Kang Swi	..	40,000
		$120,000

(b) 60% of the capital was payable immediately. The balance was to be called up when required.

(c) The plaintiff was to be appointed manager at a salary of $150, and had to report monthly to the directors in Malacca.

(d) Chan Kang Swi and Chan Kok Teng were to sign cheques.

(e) The estate was to be visited monthly by Chan Kang Swi, Chan Kok Teng and Tan Chor Hock in rotation.

In practice the arrangement about the three partners visiting the estate in rotation was not carried out. Chan Kang Swi was apparently not well, and Tan Chor Hock rarely went to the estate. For the first 18 months, that is to say until his death on the 8th September 1930, Chan Kok Teng was the only partner who made regular visits and acted as a kind of visiting agent. After the death of Kok Teng the plaintiff appears to have been left in sole charge without supervision by any of the other partners.

The next event was the drawing up of a partnership agreement in Chinese dated the 28th April 1932 and signed by the five surviving partners. The agreement commences as follows:—

> "The signatories to this partnership agreement are Chan Kang Swi, Lim Kim Sua, Chew Kong Chin, Teh Eng Khoay and Tan Chor Hock—six persons in all—who on a lucky day in February 1929 being of one mind, went into partnership and established a business at "Blading," Paloh, in Johore under the style of Lean Seng San Kongsi carrying on rubber and tapioca planting and tapioca manufacturing and and other business."

After referring to the land grants which formed part of the assets of the Kongsi, the agreement recites that at the general meeting of the partners held on the 14th February 1929 it

was decided that the shares should be divided into 120 shares of $1,000 each. The contribution of each partner is then set out, and conforms to the division of capital recorded in the minute book. In the operative part of the agreement the following clauses are important:—

(1) The capital of the kongsi shall be $120,000 divided into 120 shares. Chew Kong Chin is to be appointed to manage the affairs of the estate and factory.....

(2) Any profits derived or loss sustained by the kongsi shall be divided in proportion to the number of shares.....

(3) With regard to the profits of the kongsi, 20 bonus shares shall be created and allotted to Chew Kong Chin as remuneration for his services as manager (of the estate). At the time of the distribution of the profits the capital shall first be deducted and the balance shall be divided equally into 140 shares being the bonus plus the original number of shares.

(4) Having appointed Chew Kong Chin as manager of the estate and factory the kongsi shall not be responsible for loans contracted by him as borrower or surety or for any clandestine affair. If there is any attempt to defraud (the kongsi) the Kongsi may immediately convene a meeting of the partners and appoint a partner (or partners) to proceed to the estate to inspect the property and goods departments and balance the accounts by giving a fair valuation (to the property). If it is found that there is profit, the bonus shares to which he is entitled will be paid to him in accordance with clause 3. He shall then be dismissed from service and his bonus shares shall be cancelled. In order to be fair another person shall be appointed to replace him as is generally done in Limited Companies.

The agreement concludes:—

> "Fearing that word of mouth cannot be entrusted to, (sic), six copies of this partnership agreement have been drawn up, each partner retaining one as proof."

Then followed the signatures of the five surviving partners and then of Ho Poh Jin who signed as a witness and that of Chua Choo Siew, the clerk of Chan Kang Swi, who actually drew the document, and gave evidence at the hearing.

It will be noticed that the agreement apparently contemplated that there would be six signatories, and this fact is strongly relied on by the plaintiff. At the time that the agreement was signed no representative to Chan Kok Teng's estate had been appointed. When later the defendants were appointed administrators, they did not sign the agreement, nor apparently were they ever asked to do so.

In 1936 the estate was sold at a handsome profit. After the repayment of capital there remained a divisible profit of $248,021.31. There had been no intermediate division of profits, but as is customary in Chinese partnerships, all the partners had made drawings, in excess of the original capital put in, and when the final balance sheet was drawn up only the sum of $113,339.04 remained for division. It appears from the evidence that the discussion as to how the profits should be divided lasted for the best part of a year. All the partners who had signed the agreement of the 28th April 1932 agreed that the plaintiff was as against them entitled to his bonus of 20 shares out of the profits, but they could not agree as to the plaintiff's claim to have his proportionate bonus paid out of Chan Kok Teng's shares. Accordingly when the final balance sheet was signed on the 7th February 1937 the profits were shown to be divided into 14 shares of presumably $10,000 each and also into 12 shares. The difference per share was shown as $2,952.63 and the difference for 2 shares $5,905.26. The plaintiff was accordingly credited, like the four surviving partners, with his share of profits and his subscribed share of $10,000 on the basis of a capital of $140,000. The defendants however were credited on behalf of Kok Teng with a share of profits based on a capital of $120,000. In calculating the amount payable to the plaintiff in respect of his bonus shares the sum of $5,905.26, which represented the difference between Koh Teng's share on the basis of a capital of $120,000 and his share on the basis of a capital of $140,000, was deducted from the plaintiff's bonus share, and the accounts thus balance.

This sum of $5,905.26 is what the plaintiff now claims against Chan Kok Teng's administrators.

The plaintiff submits his claim in the alternative. First he says that the payment of the bonus was one of the terms upon which he originally joined the Kongsi and that this arrangement was embodied in a draft which was approved by Kok Teng before his death, and that this draft was the same as the agreement actually signed by the five surviving partners in 1932. In the alternative the plaintiff says that he is entitled to the bonus on a *quantum meruit* apart from any express agreement.

The two heads of claim must be considered separately. As regards the claim, so far as it is founded upon an express verbal agreement, there was the evidence of the plaintiff himself. He

was rather reluctant to give a straight answer to any question, particularly so when he was cross-examined, but on the whole I considered he was a trustworthy witness, subject however to a natural anxiety to put upon everything an interpretation that would be most favourable to his own case, and subject to the inaccuracies which are bound to creep in after a lapse of several years. He is quite definite that the promise of 20 bonus shares was the inducement which caused him to leave his former employment, and join the Kongsi, and he alleges that an agreement for the bonus shares was come to at the partnership meeting on the 14th February 1929. It was however decided that there should be a proper partnership agreement. He further alleges that in January or February 1930 while Kok Teng was still alive a draft agreement was submitted to a meeting of the partners in Malacca, and approved by them, and that this draft was identical with the agreement which was actually signed in April 1932.

The evidence of the plaintiff is supported by that of Ng Hock Seng, the estate clerk. He corroborates the plaintiff's story that he was promised 20 bonus shares. Ng Hock Seng also discussed the matter with Kok Teng, and suggested that the plaintiff's bonus shares should be mentioned in the account books which included a ledger giving the capital account of the different partners. Kok Teng, however, said that it was not necessary, as there would later be a formal partnership agreement. He is not in a position to support the plaintiff as to the alleged meeting of the partners in January or February 1930. The meeting was held in Malacca and the clerk would presumably be on the estate. He does not contradict the plaintiff as to the meeting, but on the other hand his evidence does not assist the plaintiff.

The only other witness that supports the plaintiff apart from inference to be drawn from Chan Kang Swi's evidence to which I will refer later, is Lim Kim Sua whom I regard as a witness of truth and possibly the only unbiased witness in the case. He is an elderly man, and admittedly he could not fix the exact date of events which took place 8 or 9 years ago. He says, however, that an offer of the bonus shares was made by all the partners at a meeting held before Kok Teng's death at which Kok Teng himself was present. He also says that it was the promise of the bonus shares which induced the plaintiff to join the Kongsi. On one important point however he contradicts the plaintiff and supports the evidence of the defendants, namely that the draft of the agreement which was actually signed in April 1932 was shown to him only just before that date. This negatives the plaintiff's suggestion that a draft had been prepared nearly two years before, and had actually been approved by Kok Teng before his death.

The principal witness for the defendants was Chan Kang Swi who formed the original partnership. Unfortunately before the estate was sold there was a serious dispute between Chan Kang Swi and the plaintiff. Kang Swi had a piece of jungle land which it was arranged that the Kongsi should fell and clear. They were at liberty to plant and harvest a crop of tapioca on the land, but before the tapioca was mature, Kang Swi sold the land. The Kongsi had accordingly incurred the expense of felling and were unable to recoup themselves by harvesting the tapioca. The plaintiff as manager accordingly made a claim on Kang Swi for $9,000. Kang Swi was very angry. The dispute was ultimately submitted to arbitration and Kang Swi was debited with the sum of $3,800 in the accounts. Kang Swi denied that he was still annoyed with the plaintiff, but during the course of his evidence he continually exhibited a very marked prejudice against him. Early in his evidence he tried to give the impression that he knew nothing about the plaintiff's reputation as a planter, had made no enquiries, and had found him unsatisfactory as a manager. All these opinions he was forced to modify considerably in cross-examination. It must also be remembered that Kang Swi was a kinsman of Chan Kok Teng. They had come from the same village in China. Kok Teng only left female relations, and Kang Swi took it upon himself to make arrangements for looking after Kok Teng's rubber estate when he died. He in fact arranged for the plaintiff to do so. From his demeanour, apart from what he said, I formed a very definite opinion that Kang Swi was prejudiced. On two points, however, possibly through inadvertance, he very strongly supports the plaintiff's evidence.

The first is that when the partnership agreement, Exhibit B, was prepared, Kang Swi states that a place was left for the administrators of Kok Teng to sign when appointed. This explains why the agreement purports to be made by six partners. When the agreement was signed by the other partners, no representative of Kok Teng being then in existence, the partners told the plaintiff that he could claim against the estate of Kok Teng. The inference to be drawn from this evidence is that it was anticipated that the administrators would sign because Kok Teng had already agreed that the bonus was payable.

The second point is this. Kang Swi, as I have said, tried to depreciate the plaintiff as a manager. He admitted that bonus shares were frequently given to managers who opened up, but that 20 shares out of 140 would be too much even for a good manager. His only excuse for agreeing to the 20 bonus shares was that the others agreed. This explanation I am quite unable to accept. Kang Swi started the Kongsi, he engaged the plaintiff as manager, he supplied the

estate clerk, the monthly accounts were always sent to his office in Malacca, he was not only with Lim Kim Sua the largest shareholder, but he also advanced $27,000 beyond his capital for the development of the estate. Nothing is more unlikely than that the smaller shareholders dictated to him what was to be done. On the contrary Tan Chor Hock a small shareholder, who gave evidence for the defendants, states that all decisions were made by the large shareholders. Kang Swi's final statements in re-examination and to the Court are very significant. He says: "When plaintiff asked for his bonus shares (i.e. in 1932) there was someone on my own estate who could have managed. There was no obligation to give him bonus shares because we wanted to keep him." This then is the position: Kang Swi did not value plaintiff highly as a manager, and in any case thought a bonus of 20 shares far too much. As he controlled the Kongsi the only explanation is that he felt compelled to sign Exhibit 'B' because there was a previous verbal agreement for the payment of the bonus shares by which he considered himself bound.

I do not therefore accept Kang Swi's evidence to the effect that the bonus shares were not discussed before Kok Teng died.

Of the other witnesses for the defendants Tan Eng Khoay, one of the partners in the Kongsi, is married to a sister of Kok Teng, such sister being one of the beneficiaries in his estate. He certainly says that no bonus shares were discussed at the original meeting in February 1929 and that he first heard of the bonus shares just before the agreement was signed in 1932. But he is not prepared to swear that the plaintiff was not promised bonus shares when he joined the Kongsi, or that Kok Teng did not promise the plaintiff such shares.

Chua Cho Siew, who is Kang Swi's clerk, gives evidence of preparing Exhibit 'B' and the previous draft. He would not know whether there was a previous verbal agreement and was not asked about it.

Ho Eng Woh is Kang Swi's attorney and also his brother-in-law. He gave evidence that the bonus shares were not discussed at the meeting in February 1929. He was not a partner, and he was not asked if he were present at any other meetings of the partners. According to Lim Kim Sua there were several meetings at which all the partners were present, although the meeting of February 14th 1929 is the only one recorded in the minute book. It is certain that there must have been meetings when the question of calls or other important matters were decided.

As regards the documentary evidence, it is strongly urged by the defendants that the minutes of the meeting of the 14th February 1929, of which a careful record was kept by Ho Eng Woh (Exhibit 3) and which make no mention of the bonus shares, are conclusive that the matter was not mentioned. There can be no doubt that the plaintiff himself was confident that the subject had been discussed at that meeting, and that it would have been referred to in the minutes, and he carefully drew his statement of claim on that basis. The minute book which had been mislaid was, however, subsequently discovered, and it was then found that there was no record of anything connected with the bonus shares. This omission is not conclusive that the matter was not discussed, but at least it indicates that no final decision was arrived at.

In dealing with a Chinese Kongsi it is impossible to draw the same inference as one would in the case of a European syndicate. No doubt if a European manager, engaged to open an estate, had been promised a commission if the estate were sold, he would see to it that this term was incorporated in black and white in an agreement, but it would be rash to assume that a Chinese manager would necessarily take up the same attitude. The working of a Chinese Kongsi is largely regulated by custom, and Chan Kang Swi stated in his evidence that it is usual for a man who opens up an estate to be given a bonus share out of the profits, though not so large a share as that now claimed by the plaintiff. He also stated that if the plaintiff had insisted on 20 bonus shares when the syndicate was in contemplation, it would never have been formed. I am inclined to accept both these statements as correct. My conclusion, therefore, is that when the plaintiff joined the Kongsi and was appointed manager, he expected that he would receive bonus shares if any profit resulted, and that this was fully understood and accepted by the other members. But whatever this expectation was, it fell short of an express agreement. It was at most a conditional agreement:—conditional (a) upon the plaintiff carrying out the opening up of the estate to the satisfaction of the Kongsi, and (b) upon there being any profits to divide. It is quite likely that the actual amount of the bonus shares had not been finally determined. It would accordingly have been premature to refer to the subject in the minutes, which only recorded actual decisions.

The plaintiff had, however, left a very profitable position on the Kuala Muda Estate where he was earning $600 or $700 a month. It is possible that he did not lose all his interests on that estate, as he succeeded in carrying on for a time at least through the agency of his brother, but the fact remains that he undertook the arduous work of opening up a new estate and erecting a tapioca factory at a comparatively small salary of $150 a month which was subse-

quently reduced to $125 and then to $100 a month. I do not think he would have undertaken this work if he did not have a very reasonable expectation of receiving a handsome bonus in addition. I accordingly accept the plaintiff's evidence, supported as it is by the estate clerk Ng Hock Seng, that he discussed the question with Chan Kok Teng, and asked that the term should be recorded in the account books in which the capital subscribed by the various partners was entered. Kok Teng replied that it was not necessary as a formal partnership agreement would be drawn up in due course. The partnership agreement was not drawn up at that time because the shares were not fully paid, and in fact Kok Teng's $20,000 share was never fully paid, as apparently the last call had not been made when he died. By the beginning of 1930 however the Kongsi would have had an opportunity of judging the plaintiff's skill as a manager, and I think that the question of his bonus shares was then discussed at a meeting of the partners in Malacca and a definite decision arrived at, but the formal agreement was still delayed until the final call had been made. Ultimately 18 months after the death of Kok Teng the plaintiff pressed for the question of his bonus shares to be recorded in writing, and the partnership agreement was drawn up. The evidence in favour of a verbal agreement in 1930 rests on the evidence of the plaintiff, Ng Hock Seng and Lim Kim Sua who also say that the bonus shares were part of the plaintiff's contract from the commencement. I have already referred to the evidence of Chan Kang Swi as to the circumstances under which the agreement of 1932 was made, and which appear to me to point strongly to the existence of a previous verbal agreement. After a lapse of 8 or 9 years it is not to be expected that the recollections of all the witnesses will be equally accurate, but I feel satisfied that the probabilities are strongly in favour of a definite verbal agreement having been concluded before Kok Teng's death.

I have referred to the estate account books in which the partners' capital was entered. I do not think that any inference can be drawn from the fact that the plaintiff's bonus shares are not mentioned. The subscribing partners' shares were necessarily entered as their shares were not fully paid and all payments on account would have to be recorded by the book-keeper. There was however no necessity at that stage to enter the bonus shares unless and until profits were realised by the sale of the estate.

The defendants then argue that if there was any agreement between the plaintiff and other members of the Kongsi that agreement was put an end to by the death of Chan Kok Teng which dissolved the partnership. That is of course the effect of section 33 (1) of the Partnership Act, but in fact the partnership was not dissolved but carried on as if Kok Teng were still alive, and they continued to use the deceased partner's share in the capital. Therefore section 42 (1) of the Partnership Act applies, and the representatives of Kok Teng's estate were entitled at their option to have Kok Teng's share repaid with 5% interest, or to have the share of profits attributable to his share in the capital of the Kongsi. They very wisely adopted the latter alternative.

In point of fact, even leaving aside the share of bonus claimed by the plaintiff, Kok Teng's administrators obtained a far larger share than they were entitled to either under the Partnership Act, or under the partnership agreement. When Kok Teng died he had only subscribed $13,678.38 towards his $20,000 share, and according to the minutes of the 14th February 1929 it was provided that a partner who did not pay up his instalments should either pay interest, or his capital should be cut down. This particular provision is recited in the partnership agreement of the 28th April 1932; Kok Teng's representatives however received payment of his share of profits on the basis that his $20,000 share was fully paid. In the result, on a basis of 140 shares, his share of $13,678.38 earned a profit of $35,431.60, which amounts to nearly 260% on the capital subscribed, as against 177% only earned by the other partners' shares.

As I feel no doubt that Chan Kang Swi controlled the Kongsi this indicates the extent to which he was prepared to favour his kinsman's estate. If the defendants are entitled to retain the share of bonus claimed by the plaintiff the return on the deceased partner's assets will be $41,336.86 or over 300%.

On this point of the case Mr. Massey for the defendants submitted three propositions:— (1) that the plaintiff's bonus shares must be treated as part of his remuneration as manager; (2) that the express agreement in the minutes of 1929 would negative as between the partners the claim for extra remuneration which was not so expressed; and (3) that even if a verbal agreement had been come to such agreement was put an end to by the death of Kok Teng which resulted in the dissolution of the partnership.

I accept these propositions, with the reservation that the omission of any mention of the bonus shares in the minutes of February 14th 1929 is not inconsistent with a subsequent meeting of the partners at which the bonus shares were agreed.

The position was this. In April 1932 the surviving partners entered into a formal agreement which provided (a) for the Kok Teng's

capital being retained as part of the assets of the partnership, and (b) for the payment of 20 bonus shares to the plaintiff on a division of profits. On June 13th 1932, some weeks later, the defendants obtained a grant of Letters of Administration to Kok Teng's estate. L. A. Chitty, a director of the defendant firm and its manager in Malacca, states that he never heard of Kok Teng's share in the Kongsi until 1934. I find it difficult to accept this evidence. As administrator it was his duty to ascertain what the estate consisted of, and the obvious person from whom to make enquiries was Chan Kang Swi, with whom he was well acquainted, and who could have told him the exact position. L. A. Chitty says that in 1934, when he did learn of Kok Teng's share, he wanted the partnership wound up. However, it is certain that he took no steps to have it wound up, and must be taken to have elected to retain the share of Kok Teng in the partnership assets and claim the profits, if any, to which such share would entitle him. When such an election had taken place, the position was not quite the same as it was during the existence of the partnership. In the absence of special agreement, partners cannot generally claim any special remuneration *inter se*, even though one or two of the partners may have done all the work. When, however, a partner dies and his administrators elect to retain his share in the partnership assets, the surviving partners are allowed to charge for their services in earning the profits in which the administrators of the deceased partner claim a share (see order in *Manley* v. *Sartori*, (1927) 1 Ch. p. 157 at p. 167).

It would appear to be an elementary principle of equity that the administrators cannot claim a share in the profits without also shouldering their share of the expenses which are a necessary incident to the earning of the profits. When the defendants elected in 1932, or in 1934, to retain the deceased's share in the partnership the management of the estate was in the hands of the plaintiff, whose remuneration consisted of a monthly salary and 20 bonus shares, which were really a commission on profits if such profits were earned. As the defendants did not sign the partnership agreement, the only question that can arise as between them and the plaintiff is whether the plaintiff's remuneration was reasonable. There might well be cases where the Court would direct an enquiry as to what would be reasonable remuneration in a case such as the present. But here I do not think that any such enquiry is called for. The surviving partners agreed what the plaintiff's remuneration should be. Both Kang Swi and Lim Kim Sua had a far larger interest than Kok Teng, and they and the other partners were in the best position to say what remuneration would be reasonable. Apart from that Kok Teng had during his life agreed to the 20 bonus shares, which is further evidence to the same effect. When therefore the defendants elected to retain the deceased's assets in the partnership, they must be taken to have known the conditions, and to have accepted them. I have pointed out that even apart from the $5,905.26 the defendants have already been paid on the basis that the deceased's capital was $20,000, whereas his capital was in fact only $13,678.38. If the partnership had been wound up by the Court an enquiry would have been directed as to how much of the profits realized after the death of Kok Teng was attributable wholly or in part to the labour and skill of those by whose instrumentality such profits were earned. It follows that the deceased's share of profits could not have been more than would be attributable to his actual capital in the firm, and might well have been considerably less (see *per* Wigram V.C. in *Willet* v. *Blanford*, Hare p. 253, and *Lindley* on Partnership, 10th Edition p. 694 *seq.*). In my opinion the defendants have in any case received a far larger share of the profits than they were strictly entitled to, and I see no justification for their claim to exaggerate such profits yet further at the plaintiff's expense.

I find, therefore, that on the division of the profits in February 1937 the plaintiff had a legal right to the bonus shares as against the whole assets of the partnership, including the share in the assets belonging to the defendants as administrators. The only remaining question therefore is whether by signing the final balance sheet on the 8th February 1937 the plaintiff released such right, or in other words, made a present to the defendants as administrators of the sum of $5,905.26 to which he was legally entitled.

There is considerable conflict of evidence as to what took place at the meeting at Kang Swi's house at Klebang on Sunday the 7th February 1937. For reasons previously stated, I accept the evidence of Lim Kim Sua as being substantially correct. The question as to how the balance sheet should be drawn was apparently discussed for several months, and a previous balance sheet had been prepared on the instructions of the plaintiff showing a division into 140 shares. Kang Swi however would not agree, possibly because the defendants would not agree. They knew of the plaintiff's claim because Messrs. Salt & Co. wrote to them on the plaintiff's behalf on the 29th January 1937, and L. A. Chitty discussed this letter with Chan Kang Swi. Lim Kim Sua said that the partners dared not give the plaintiff the share of the bonus attributable to Kok Teng's share because he had not signed the partnership agreement. If they

had paid the share they would all have been liable to a suit by the defendants. By arranging for the money in dispute to be paid to the defendants the plaintiff was left to claim against them and the remaining partners were not concerned with what happened. As Tan Chor Hock, one of the partners, said: "As long as I did not have to pay, I did not care who got it," I think therefore that having failed to get the partners to pay him the disputed share there and then, the plaintiff reluctantly agreed to the share being paid to the defendants, but with every intention of pursuing his claim against them. I do not for a moment think that he intended to release his claim and I cannot find that there was any consideration moving from the defendants to support such a release. A waiver, not under seal, can in any case only be effective if there was an intention to waive (see *Alkaff & Co.* v. *The Governor-in-Council*, (1937) S.S.L.R. p. 201; 6 M.L.J. p. 211), and I am satisfied that there was no such intention. The plaintiff in fact lost no time in putting forward his claim, and instructed solicitors to write in connection with such claim the very next day the 8th February 1937. It is true that this letter and the subsequent letter of the 18th February were written to Kang Swi and not to the defendants, but Kang Swi has given evidence that after the receipt of the 2nd letter he informed L. A. Chitty on the telephone. If, therefore, as L. A. Chitty has said, he distributed the assets among the beneficiaries on the 2nd April 1937, he did so with notice of the plaintiff's claim and at his own peril, and no question of estoppel arises.

I have considered the cases such as *In re Hodgson, Beckett* v. *Ramsdale*, 31 Ch. D. p. 177 at p. 183, which suggest that a claim against a dead man's estate should be carefully scrutinized and generally requires corroboration. I do not however think that those authorities have much bearing on the present case, first because the plaintiff's claim is in fact corroborated, and secondly because the defendants' liability arises not so much from any promise made by Kok Teng during his life as from the legal consequences of the defendants' election to retain his share in the partnership after his death.

In my opinion, therefore, the plaintiff is entitled to judgment for the amount claimed and costs.

Judgment accordingly.

Solicitors for the plaintiff—*Braddell Bros.*

Solicitors for the defendant—

Allen & Gledhill.

[ORIGINAL CIVIL JURISDICTION]

HORNE, J.

August 22, 1938.

G. D. GOULD v. DOBB & COMPANY LTD.

[SINGAPORE SUIT No. 160 of 1938]

Master and servant—Termination of service —Length of notice—Libel—Privileged statement.

The plaintiff was a civil engineer who was employed by the defendant-company to supervise certain structural works which the defendant-company were executing as contractors. The contract was an indefinite contract of employment.

Held, that the plaintiff was entitled to reasonable notice and that having regard to the plaintiff's professional standing and the nature of the work he was doing he was entitled to three months' notice.

The plaintiff also claimed against the defendant-company for damages for libel contained in a letter written by the defendant-company to the plaintiff's solicitors in reply to a demand by them for payment of salary to the plaintiff as a dismissed servant.

Held, that it would be a restriction on the ordinary and necessary right of free expression of opinion if the Court were to hold that the defendant-company's statement of its reasons for dismissing the plaintiff was in the circumstances irrelevant or wholly unconnected with the subject matter of the enquiry and that the occasion was privileged.

TRIAL OF ACTION.

Tampoe Phillips for plaintiff.

Seth for defendant-company.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

HORNE, J.—I propose first to deal with the question of reasonable notice for the termination of the employment, and that in turn depends upon whether the plaintiff was at the time of his dismissal generally in the employment of the defendant company as an engineer. If he was not then the question of notice does not arise because the plaintiff has admitted that the notice would be sufficient in these words "I am not suggesting that I received insufficient notice in respect of the Plotting Room contract, that and other work had all merged into the one thing .....when I was instructed to start the Recreation Ground and Road Contract."

The Plotting Room Contract was expected to end about X'mas 1937 and apart from the installation of machinery which has not yet been installed, the construction work was completed in February 1938. At the end of June Mr. Dobb, the managing director of the defendant company, went to England and returned at the end of September. During this time the plaintiff discussed his prospects with the acting Managing Director Mr. Brucker, but received no promise of future employment from him. Nevertheless